IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4099 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAFAI KAMDAR SANGH

Versus

BHAVNAGAR MUNICIPAL CORP.

Appearance:

MR MR ANAND for Petitioners

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/04/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, a Union of Safai Kamdars under the Bhavanagar Municipal Corporation have challenged the judgement and order dated 04/07/1983 passed by the Labour Court, Rajkot in Recovery

Application No.723 to 1343 of 1984, in so far as the issue of house rent allowance is concerned.

2. There was an industrial dispute which was referred to the Industrial Tribunal, Gujarat State, Ahmedabad bearing Reference No.137 of 1979, at the instance of the workmen employed under the Bhavanagar Municipal Corporation. One of their demands was regarding the payment of House Rent Allowance to Safai Kamdars. After considering the material on record and hearing the concerned parties the Tribunal gave the following award in respect of House Rent Allowance as contained in paragraph 13 of the Judgement dated 23rd May, 1983 :

> "In view of the above, the Municipality is directed to pay house rent allowance to safai kamdars who have not been allotted quarters by the Municipality the house rent allowance on the same lines and rate as it pays to its other employees. The question then is from what date the Municipality should be directed to pay the same to these safai kamdars. The demand is that it should be paid from 1-4-1970. There is no basis for such retrospective claim made out in the evidence on record. The reference order is stated 4-4-1979 and considering the facts and circumstances I think it will be reasonable that the Municipality should be directed to pay to the safai kamdars from 1-5-1980. The Municipality should pay up the arrears of house rent allowance to such safai kamdars as stated hereabove within nine months and continue to pay per month house rent allowance as above from the month of publication of this award."

3. On the basis of the aforesaid award, 163 Safai Kamdars through their Union filed Recovery Application No.982 of 1984 before the Labour Court, Rajkot. The stand of the respondent Corporation in the said recovery proceedings was that some of the Safai Kamdars were allotted quarters by the Corporation at a price of Rs.1250/- and that the quarters were allotted to those Safai Kamdars. Hence they were not entitled to get H.R.A. The case of the Safai Kamdars was that since the quarters were allotted to them on sale basis, it could not be said that the Safai Kamdars in question were

having municipal quarters and, therefore, they were entitled to get the H.R.A.

4. After considering the material on record and hearing the learned counsel for the parties, the Labour Court came to the conclusion that the Safai Kamdars who were allotted quarters by the Municipal Corporation at the price of Rs.1250/- on ownership basis were not entitled to get the H.R.A and only those Safai Kamdars who were not allotted any quarters by the Municipal Corporation were entitled to get the H.R.A. In view of the facts placed before the Labour Court that 5 such Safai Kamdars named in paragraph 7 of the judgement under challenge, were not given any quarters, the Labour Court directed the Corporation to pay them H.R.A. The Labour Court ultimately held that except the said 5 workmen the applicants had not proved their case for getting H.R.A. Thus the demand of H.R.A. of the remaining applicants was rejected.

5. The learned counsel for the petitioner has submitted that the Labour Court erred in holding that quarters allotted on ownership basis could disqualify the Safai Kamdars from getting the H.R.A. He has also submitted that just as Safai Kamdars or any other employees could own their house by purchasing the same from the open market, the Safai Kamdars had purchased the quarters in question from the Municipal Corporation. There could be no distinction between employees who purchased residential accommodation from the Municipal Corporation on the one hand and those who purchased their residential accommodation from the open market or constructed the same at their own cost.

6. The employer may either provide the quarters rent free or may provide an allowance with which an employee can occupy some other quarters. In the facts and circumstances of the case and in view of the fact that the Municipal Corporation has allotted quarters to the employees on ownership basis at a nominal price of Rs.1250/- in a city like Bhavanagar, it can not be said that the Corporation had not allotted quarters to the Safai Kamdars in question. Accordingly as per the terms of the award in the reference rendered by the Tribunal in Industrial Reference (I.T) No.137 of 1979, the Safai Kamdars who were allotted quarters on ownership basis at nominal price were disqualified from getting H.R.A. from the Municipal Corporation. There is therefore no substance in the challenge to the order of the Labour Court.

7. The learned counsel for the petitioner, however, further sought to raise a contention that there were some employees who were allotted lands by the Corporation at a nominal rate. They were given interest free loan for constructing houses and still they are being given H.R.A.

A perusal of the judgement of the Labour Court indicates that no such plea was raised before the Labour Court. Hence the Court has not permitted the petitioner to raise any such plea before this Court in a petition under Article 227 of the Constitution of India.

8. The learned Counsel for the petitioner further submitted that the 5 Safai Kamdars in whose favour the Labour Court passed the order were allotted quarters by the Corporation on ownership basis at the same price Rs.1250/-. If that is so, the Labour Court was misled in passing the award in favour of those 5 Safai Kamdars. If there is any truth in this statement, it will be open to the respondent Corporation to verify the factual aspect and, if necessary, to move the Labour Court for modification of the order in respect of those 5 workmen.

9. All the same, while dismissing the petition, considering the fact that the Safai Kamdars who had filed Recovery proceedings before the Labour Court were granted interim relief by this Court as far back as in the year 1986 and they have been paid H.R.A. by the respondent Corporation on the basis that they were entitled to get the H.R.A. notwithstanding allotment of quarters on ownership basis and considering the fact that the employees are class-IV employees drawing the lowest grade pay-scale, the respondent shall not recover the amounts of H.R.A. already paid to them till 31st March, 2001 i.e. for the period upto 31st, March, 2001.

10. The learned counsel for the petitioner has stated that the Safai Kamdars shall make a representation to the respondent Corporation with regard to the policy of payment of H.R.A. from the period from 1st April, 2001. This judgement shall not come in way of the respondent Corporation considering such representation.

11. Subject to the above observations, Rule is discharged with no order as to costs. Interim relief stands vacated w.e.f. 1st April, 2001.

(M.S. Shah, J)

'Bhavesh'